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Supreme Court of the United States,

OCTOBER TERM, 1905.

No. 308.

JOHN W. BALLMANN, *Plaintiff in Error,*

vs.

THE UNITED STATES.

BRIEF IN REPLY

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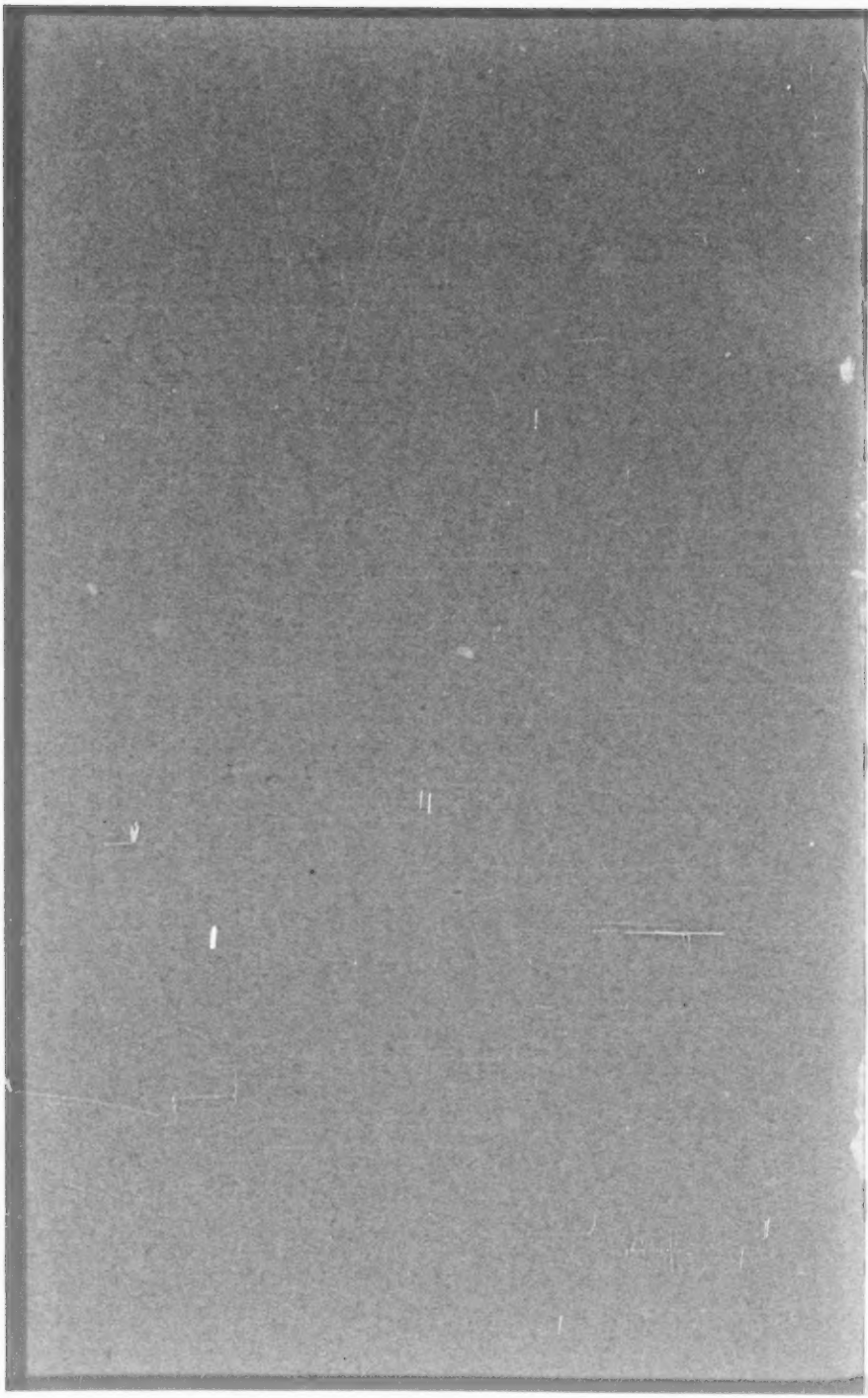

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When the case was submitted we had not seen the solicitor general's brief in its completed form, and therefore reserved the privilege, through his courtesy, of filing a brief in reply. We have now received the brief. We do not find that the solicitor general disputes the first three propositions submitted in our brief. He expressly concedes that Ballmann could not properly be committed for an offense not specified in the written charges of the grand jury, and he further concedes that those charges, so far as they relate to a book, were that Ballmann had failed "to produce the cash book *called for by the subpoena of April* 7th" (last page of solicitor general's brief). He has heretofore conceded that the subpoena of April 7th was confined to books and papers "showing transactions under the name of A. Smith and A. Johnson" (see pages 8 and 9 of our brief). It follows from

the admissions of the solicitor general, that Ballmann could not be committed without proof beyond a reasonable doubt that, on April 7, he had in his possession or under his control a cash book "showing transactions under the name of A. Smith and A. Johnson," and that he wilfully failed to produce it. No other charge was preferred against him.

Now, there is not a scintilla of evidence that Ballmann ever had a cash book "showing transactions under the name of A. Smith and A. Johnson." We suppose it will not be claimed that there is a presumption of law or of fact that any particular book contains "transactions under the name of A. Smith and A. Johnson," in the absence of evidence of its contents.

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Thomas F. Shay,
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